

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
RICHARD AND DIANE BRADLEY }

For Appellants: Gary S. Goss
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Richard and Diane Bradley against a proposed assessment of additional personal income tax in the amount of **\$1,746.00** for the year 1973.

Appeal of Richard and Diane Bradley

The issue presented is whether respondent **properly** computed the tax on appellants' 1973 tax preference income pursuant to section 17062 of the Revenue and Taxation Code.

During the year in question, section 17062 provided, in pertinent part:

In addition to the other taxes imposed by this part, there is hereby imposed ... a tax equal to 2.5 percent of the amount (if any) by which the sum of the items of tax preference in excess of thirty thousand dollars (\$30,000) is greater than the amount of net business loss for the taxable year. (Emphasis added.)

The term "net business loss" is defined in section 17064.6 of the Revenue and Taxation Code as "adjusted gross income (as defined in Section 17072) less the deductions allowed by Section 17252 (relating to expenses for production of income), only if such net amount **is** a loss."

On their 1973 joint California personal income tax return, appellants reported items of tax preference in the total amount of \$99,846. In computing the tax imposed by section 17062, appellants offset against their tax preference income a purported "net business **loss**" of \$178,577.

After conducting an audit of the 1973 return, respondent disallowed the \$178,577 "net business loss". Respondent's action was based upon its determination that appellants did not incur a "net business loss", as that term is defined in section 17064.6, because their adjusted gross income less the deductions allowed by section 17252 did not amount to a net loss. Appellants protested respondent's action and this appeal followed.

The information filed on appellants' behalf and in support of their position on appeal does not contain a definitive statement of the grounds for the appeal. For that reason, we are unable to determine the precise nature of appellants' objection to the proposed assessment. In this regard we note that respondent's determination of a tax deficiency, and its proposed assessment based thereon, is presumed to be correct. The burden is upon the taxpayer to prove that respondent's action is erroneous or improper. (Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, **Cal. St. Bd. of Equal.**, Nov. 30, 1965;

Appeal of Richard and Diane Bradley

Appeal of Charles R. Penington, Cal. St. Bd. of Equal.,
Jan. 20, 1954.) Initially, in order to sustain that
burden, it is incumbent upon the taxpayer to submit a
detailed statement of the facts and circumstances which
form the basis of the appeal. This appellants have not
done.

Accordingly, respondent's action in this matter
must be sustained.

O R D E R

Pursuant to the views expressed in the opinion
of the board on file in this proceeding, and good cause
appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED,
pursuant to section 18595 of the Revenue and Taxation
Code, that the action of the Franchise Tax Board on the
protest of Richard and Diane Bradley against a proposed
assessment of additional personal income tax in the
amount of \$1,746.00 for the year 1973, be and the same
is hereby sustained.

Done at Sacramento, California, this 6th day
of December, 1977, by the State Board of Equalization.

William L. Payne, Chairman
John A. ..., Member
John ..., Member
Geoff ..., Member
..., Member